



THE CITY OF NEW YORK
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May 13, 2021

Honorable Vernon S. Broderick (By ECF)
United States District Judge
Southern District of New York
40 Foley Square
New York, New York 11201

Re: *Winters v. Smalls, et al.*, 19 Civ. 7272 (VSB) (SN)

Your Honor:

I am an Assistant Corporation Counsel in the Office of James E. Johnson, Corporation Counsel of the City of New York, and the attorney assigned to represent Defendants Warden Smalls, Captain Barnaby, Deputy Cook, and Correction Officer Gauman in this matter. Defendants respectfully request a sixty-day extension of the fact discovery deadline, from May 15, 2021 to July 14, 2021, including an adjournment of the post-discovery conference presently scheduled for May 27, 2021. This is Defendants' third request for an extension of the fact discovery deadline. Both of Defendants' previous requests were granted. This extension is necessary because (1) Defendants are still awaiting receipt of Plaintiff's certified medical records and (2) this case was recently reassigned to the undersigned Assistant Corporation Counsel. Both the medical records and additional time for the undersigned to familiarize himself with the record are required for the Defendants to adequately prepare for Plaintiff's deposition. The undersigned was unable to obtain Plaintiff's position on this motion because Plaintiff is presently incarcerated at the Anna M. Kross Center ("AMKC") on Riker's Island and the undersigned was first assigned this matter on May 11, 2021.

By way of background, Plaintiff filed an amended complaint on October 28, 2019, alleging that on March 9, 2019, he was attacked by another inmate. Am. Compl., ECF No. 7. Plaintiff further alleges that Defendants were deliberately indifferent in protecting Plaintiff from the inmate who attacked him and that Defendants conspired to cover the incident up. *Id.* at 4-6. Additionally, Plaintiff alleges that he sustained injuries as a result of the incident.

Defendants' previous extension requests focused on receiving sufficient discovery responses to conduct a comprehensive deposition. Most recently, Defendants requested an enlargement to receive executed medical releases and supplemental discovery requests from Plaintiff. *See* ECF No. 37. The Court granted this request. ECF No. 38. The fact discovery deadline was set for May 15, 2021. Since then, Defendants received Plaintiff's releases and

requested the applicable medical records. However, Defendants are not yet in receipt of the medical records. Because it can take at least a month—and, on occasion, even longer—to receive medical records, sixty additional days should provide Defendants adequate time to receive and review the documents in anticipation of Plaintiff's deposition.

Additionally, on May 11, 2021, this case was reassigned to the undersigned. The discovery extension will allow the undersigned sufficient time to review the case file and prepare for Plaintiff's deposition. As such, Defendants respectfully request that fact discovery be extended by sixty-days through Wednesday, July 14, 2021, and respectfully request that the Court endorse the attached revised case management plan and scheduling order.

Based on the foregoing, Defendants respectfully request a sixty-day extension of the fact discovery deadline from May 15, 2021 to July 14, 2021, including an adjournment of the post-discovery conference presently set for May 27, 2021. Defendants believe this should provide sufficient time to receive the necessary medical records, schedule Plaintiff's deposition, and complete factual discovery.

Defendants thank the Court for its time and consideration of this matter.

Respectfully submitted,

/s/ Damian P. Gallagher

Damian P. Gallagher
Assistant Corporation Counsel
Special Federal Litigation Division

Cc: Jason Winters (By U.S. First Class Mail)
Plaintiff Pro Se
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APPLICATION GRANTED

SO ORDERED

VERNON S. BRODERICK

U.S.D.J. 5/14/2021

The conference scheduled for May 27, 2021 is adjourned to July 29, 2021, at 2:00 p.m. Defense counsel is directed to inform the Warden of the adjournment immediately and ensure by phone or email that the Warden has notice of the adjournment and the new date. No further extensions will be granted barring extraordinary circumstances. The Clerk of Court is respectfully directed to mail a copy of this Order to Pro Se Plaintiff.